



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

June 3, 2021

VIA ECF AND EMAIL

The Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Memo Endorsed: As discussed at today's conference, the Magistrate Judge's June 2, 2021 order granting the Defendant pretrial release is stayed pending the Government's appeal.

SO ORDERED.

Paul G. Gardephe
United States District Judge

Re: ***United States v. Charles Onus, 19 Cr. 346 (PGG)*** Dated: June 3, 2021

Dear Judge Gardephe:

In anticipation of a telephone conference scheduled today for 12:30 p.m., the Government appeals, pursuant to 18 U.S.C. § 3145(a), from Magistrate Judge Sarah L. Cave's order granting pretrial release to defendant Charles Onus in the above-captioned case after a hearing that ended at approximately 7:30 p.m. yesterday, June 2, 2021. The Government submits this letter to seek a stay of the release order pending this appeal should the defendant satisfy the conditions to be released prior to this Court's determination of the bail appeal.

On May 9, 2019, the defendant, a 34-year-old Nigerian citizen and resident, was charged in a sealed indictment with one count of computer fraud for causing damage to a protected computer, which carries a maximum sentence of 10 years in prison; one count of computer fraud for unauthorized access to a protected computer to further intended fraud and one count of receipt of stolen money, which each carry a maximum sentence of five years in prison; one count of wire fraud, which carries a maximum sentence of 20 years in prison; and one count of aggravated identity theft, which carries a mandatory sentence of two years in prison to be served consecutively to any other sentence imposed. The charges are in connection with the defendant's participation in a scheme, from at least in or about July 2017 through at least in or about 2018, to conduct cyber intrusions of multiple user accounts maintained by a company that provides human resources and payroll services to employers across the United States (the "Company"), in order to steal payroll deposits processed by the Company.

On April 14, 2021, the defendant arrived on a flight in San Francisco from Abuja, Nigeria, via a connecting flight in Istanbul, Turkey, and was arrested in connection with this case. The defendant was presented before Magistrate Judge Jacqueline Corley in the United States District Court for the Northern District of California. On April 21, 2021, after a bail hearing, Magistrate Judge Corley ordered that the defendant be detained pending his transfer to the Southern District of New York. Magistrate Judge Corley made the following findings to support her detention order: "the defendant is a citizen of Nigeria with significant ties to that country and minimal ties to the

United States; he has no viable bail resources in the United States; and the nature of the charges support a finding of computer and financial sophistication which could facilitate his flight from the United States.”

On June 2, 2021, the defendant arrived in the Southern District of New York and was presented before Magistrate Judge Cave. Pretrial Services recommended that the defendant be detained based on risk of flight, due to, among other things, his Nigerian citizenship and significant ties to Nigeria, his minimal ties to the community, and his unknown foreign assets. After a bail argument, Magistrate Judge Cave ordered that the defendant be released principally on a \$100,000 personal recognizance bond co-signed by two financially responsible persons, the posting of \$10,000 in cash/property, home incarceration with electronic monitoring, the condition that the defendant may not have access to a computer or smartphone, and other standard conditions of release.¹ Magistrate Judge Corley further ordered that the defendant may be released upon satisfaction of the condition requiring the signing of the bond by himself and two co-signors, with other conditions to be satisfied within one week.

A district court reviews *de novo* a magistrate judge’s decision to release or detain a defendant pending trial. *Gotti v. United States*, 358 F. Supp. 2d 280, 283 (S.D.N.Y. 2005); *see also United States v. Leon*, 766 F.2d 77, 80 (2d Cir 1985) (“[A] district court should fully reconsider a magistrate’s denial of bail and in ruling on a motion for revocation or amendment of a detention order should not simply defer to the judgment of the magistrate, but reach its own independent conclusion.”). As the Government argued in front of Magistrate Judge Cave and as Pretrial Services found, the defendant poses a significant risk of flight and the Government would be irreparably harmed if the defendant were released pending this appeal and fled. Accordingly, the Government requests a stay of the release order pending determination of this appeal by Your Honor. Courts in this Circuit have routinely granted stays of a magistrate judge’s release order pending appeal to the district judge. *See, e.g., United States v. Colombo*, 777 F.2d 96, 98 (2d Cir. 1985) (noting stay of magistrate judge release order pending bail appeal by the government to the district court pursuant to 18 U.S.C. § 3145(a)(1)); *United States v. Harrison*, 354 F. Supp. 3d 270, 272 (W.D.N.Y. 2018) (same); *United States v. Valdez*, 426 F. Supp. 2d 180, 182 (S.D.N.Y. 2006) (same); *United States v. Agnello*, 101 F. Supp. 2d 108, 109 (E.D.N.Y. 2000) (same).

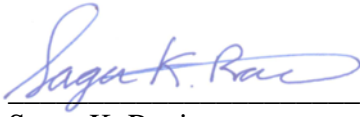
¹ The release order has not yet been filed and the conditions set forth above are based on the recollection of the undersigned.

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Accordingly, should the defendant satisfy the conditions to be released prior to this Court's determination of the bail appeal, the Government respectfully requests that the Court stay the release order pending the appeal.

Respectfully submitted,

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the Southern District of New York

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